IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 45 OF 2001.

1. Shri Krishna Laxman Pitre,
   (deceased by his L.Rs.)-
1a. Smt. Kamlabai Krishna
   Pitre,
1b. Shri Laximan Krishna Pitre,
1c. Smt. Madhushri Laximan Pitre,
1d. Shri Atmaram Krishna Pitre,
1e. Smt. Anuradha Atmaram Pitre,
1f. Shri Narahari Krishna Pitre,
1g. Smt. Sukhada Narahari Pitre,
1h. Shri Pandharinath Krishna
   Pitre,
1i. Smt. Vandana Pandharinath
   Pitre,
1j. Shri Vijaykumar Krishna Pitre,
1k. Smt. Vedashri Vijaykumar Pitre,
   All majors, r/o Vithalapur,
   Bicholim-Goa.
1l. Shri Sudhakar A. Dhupkar,
1m. Smt. Swapna Sudhakar Dhupkar,
   Both majors, r/o Marcel,
   Ponda-Goa.
1n. Shri Manohar Vasudev Kelkar,
1o. Smt. Sunita Manohar Kelkar,
   Both majors, r/o Vithalpur,
   Sanquelim, Taluka Bicholim-Goa.
1p. Shri Mohan V. Kajrekar,
1q. Smt. Hemangi Mohan Kajrekar,
   Both majors, r/o Porvorim-Goa. ... Appellants.

Versus

Smt. Anandi Keshav Pitre,
w/o Keshav Pandurang Pitre,
r/o Sanquelim-Goa. ... Respondent.

Mr. M.S. Sonak, Advocate for the Appellants.

Mr. S. Dessai, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 7th March 2003.

ORAL ORDER.

This appeal has been filed by the original defendant in Regular Civil Suit No. 89 of 1986. The

learned Civil Judge, Senior Division, Bicholim, by Judgment and Decree, dated 23rd November 1995, had dismissed the suit filed by the respondent/plaintiff. While dismissing the suit, the learned trial Court had answered the issues regarding the ownership of the plaintiff and the existence of a well on the boundary between the properties of the plaintiff and the defendant in the affirmative. The learned trial Court, however, had answered in the negative the issues regarding the installation of an electric pump by the defendant and the entitlement of the plaintiff for the removal of the pump. The original plaintiff/respondent, against the Judgment and Decree of the learned trial Court, carried an appeal to the learned District Judge, bearing Regular Civil Appeal No. 77 of 1995. The learned District Judge, by Judgment and Decree, dated 18th March 2000, allowed the appeal and quashed and set aside the Judgment and Decree, passed by the learned trial Court and partly allowed the suit filed by the plaintiff. The defendant, being aggrieved by the Judgment and Decree of the learned District Judge, filed Second Appeal No. 50 of 2000 in this Court. A learned Single Judge of this Court, by Order, dated 13th October 2000, set aside the Judgment and Decree of the learned lower appellate Court and remanded the appeal to the lower appellate Court for adjudication afresh. The learned lower appellate Court, after remand, by the

Judgment and Decree, dated 4th April 2001, in Regular Civil Appeal No. 77 of 1995, allowed the appeal and set aside the Judgment and Decree of the learned trial Court, dated 23rd November 1995 and decreed the suit filed by the plaintiff/respondent. The original defendant, being aggrieved by the Order of the learned lower appellate Court, dated 4th April 2001, has filed the present Second Appeal.

2. I have heard Mr. Sonak, the learned counsel appearing on behalf of the appellants and Mr. Dessai, the learned counsel appearing on behalf of the respondent.

3. The learned lower appellate Court in paragraph 7 of its Judgment had taken up the points for consideration as to whether the suit well was a common well existing half in the property of the appellants and the other half in the property of the respondent and whether the respondent/plaintiff was entitled for an Order of permanent injunction restraining the defendant from installing an electric pump in the suit well and putting an iron net. The other point for consideration, which was taken up by the learned lower appellate Court, was whether the learned trial Court had committed illegality in appreciating the evidence on record and dismissing the suit. The learned lower appellate Court

in its reasoning, at paragraph 8, made a reference to Exhibit P.W.1/B, which is the Cadastral Survey Plan in respect of the property of the appellants, which shows that half of the well is situated in the property of the plaintiff. The learned lower appellate Court then made a reference to the Cadastral Survey Certificate, at Exhibit P.W.1/E, in which there is a reference to the well situated in the property under Survey No. 200 as well as in the property under Survey No. 201, which is of the defendant. The learned lower appellate Court then appreciated the documents and came to the conclusion that the Cadastral Survey Certificate in respect of the property of the plaintiff as well as of the property of the defendant does not refer to two wells but refers to only one well, which is half in the property of the plaintiff and half in the property of the defendant. The learned lower appellate Court also made a reference to the memo of the site inspection carried out by the learned trial Court which showed that the suit well was lying on the boundary of the properties. The learned lower appellate Court also made a reference to the site inspection memo to hold that the site inspection memo corroborates the old Cadastral Survey Plan as well as the Cadastral Certificate that half of the well is in the property of the appellant and the other half in the property of the respondent. The learned lower appellate Court, therefore, recorded a

finding:- "The fact about the existence of the well in the property of the appellant as well as in the property of the respondent is also corroborated by the oral evidence led by the appellant so also the evidence led by the respondent." The learned lower appellate Court also made a reference to the evidence of D.W.1 Atmaram Pitre, who had been examined as a witness by the defendant, who has stated that the plastering of the suit well was done to the western side only, which, therefore, according to the learned lower appellate Court, meant that the defendant had plastered only the part of the well which fell in his property thereby leaving unplastered the half of the well which fell in the property of the plaintiff.

4. After appreciating the evidence and the documents on record, the learned lower appellate Court recorded a finding that since it was established that the well was situated half in the property of the appellant and the other half in the property of the defendant, the suit well belonged to the appellant and the respondent and both have a right to the said well. The learned lower appellate Court further recorded a finding that the mere fact that the plaintiff has another well in his property would not mean that the plaintiff has no right to the suit well. The learned lower appellate Court negatived the contention of the

defendant that he had installed an electric pump way back in the year 1993 and held that the defendant cannot draw water with the means of an electric pump from the common suit well. In the backdrop of the findings, therefore, the learned lower appellate Court allowed the appeal and decreed the suit filed by the plaintiff.

5. Mr. Sonak, learned counsel appearing on behalf of the appellants, has urged before me that the learned lower appellate Court, while rendering the Judgment in the Regular Civil Appeal, has not drawn up the points for determination arising therein. A perusal of paragraph 7 of the Judgment of the learned lower appellate Court would show that the learned lower appellate Court has addressed itself and has drawn the points which arise for its determination in the appeal. Mr. Sonak then submitted that the learned lower appellate Court has solely relied on the memo of site inspection carried out by the learned trial Court. The learned lower appellate Court, while allowing the appeal, has not solely relied on the memo of site inspection carried out by the learned trial Court but has appreciated the documents and the evidence tendered by the parties and has then held that the contention of the plaintiff, apart from being corroborated by the documents on record and the evidence, is also corroborated by the memo of site inspection carried out

by the learned trial Court.

6. I have perused the Judgment and Decree impugned in the present Second Appeal. According to me, this Second Appeal does not raise any substantial question of law to merit any interference by this Court in the findings of fact recorded by the learned lower appellate Court. The Second Appeal is, therefore, devoid of substance and is dismissed in limine with no order as to costs.

(P.V. HARDAS)
JUDGE.

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